

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

In the Matter of:

Financial One, LLC, a Delaware Company
28801 Southfield Road
Lathrup Village, Michigan 48076,

Enforcement Case No. 06-4854

License No.: FL-1591,

Mr. Johnnie Denham, Jr., President,

Respondent.

Issued and Entered,
This 28 day of February, 2007,
By Richard D. Lavolette
Chief Deputy Commissioner.

ORDER FOR SUMMARY SUSPENSION,
ORDER TO CEASE AND DESIST,
AND
NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

Respondent is currently licensed with the State of Michigan, Office of Financial and Insurance Services ("OFIS") as a mortgage broker pursuant to the provisions of the Mortgage Brokers, Lenders, and Servicers Licensing Act ("MBLSLA"), 1987 PA 173, as amended, MCL 445.1651 *et seq.*

The Commissioner of OFIS is statutorily charged with the authority and responsibility to exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in this state pursuant to the MBLSLA.

Elliott D. Purty, Examination Manager in the Mortgage Examination and Investigation Section, Office of Financial Evaluation, Office of Financial and Insurance Services, Department of Labor & Economic Growth, conducted an investigation of Respondent's mortgage brokering activities and has filed an Affidavit in this matter addressing the investigation findings.

Examiner Purty has stated that the investigation revealed that Respondent and its sole owner, director and shareholder, and several employees, on a continuous and ongoing basis, has engaged in a pattern of fraud, deceit, and material misrepresentation in connection with its residential mortgage brokering activities. Examiner Purty states that his investigation has revealed that Respondent and its principals, agents, officers, directors, and employees repeatedly violated the MBLSLA. As a result of Respondent's conduct, many borrowers, investors, and lenders were financially harmed. Based upon the investigation findings, Examiner Purty has petitioned the Commissioner to issue an Order of Summary Suspension of Respondent's license (License No. FL-1591), contending that Respondent's continuing activity constitutes an imminent threat of financial loss to borrowers, investors, and lenders, and an imminent threat to the public safety and welfare.

I HEREBY FIND that the alleged conduct of Respondent, if true, indicates that an emergency Order of Summary Suspension is appropriate and necessary in order to protect the public interest.

I FURTHER FIND that Respondent's continued licensure poses an imminent threat of financial loss and an imminent threat to the public welfare. Respondent's pattern of fraud, deceit, and material misrepresentation in connection with residential mortgage loans, could result in disastrous financial consequences for borrowers, investors, lenders, and the residential mortgage industry. The facts alleged, if true, indicate that Respondent does possess the requisite character and fitness to be engaged in the business as a mortgage broker and further indicates that Respondent does not command the confidence of the public in the regulated area nor warrant the belief that Respondent will comply with the law.

Due process requirements of MBLSLA and the Administrative Procedures Act require that the licensee, subject to summary disciplinary action, be provided with an opportunity for a prompt hearing on the order for summary suspension. A summary suspension of Respondent's license is authorized by Section 92 of the Michigan Administrative Procedures Act of 1969, as amended, MCL 24.292, and Section 15 of the MBLSLA, MCL 445.1665. Further, due process requires that Respondent be afforded an opportunity for hearing on the Order to Cease and Desist.

Now, therefore, it is hereby ORDERED that:

1. A copy of this Order be served upon Respondent forthwith. The Order of Summary

Suspension shall be immediately effective upon service of this Order on the Respondent.

Respondent's license to engage in the business of mortgage brokering, pursuant to the provisions of the MBLSLA, is hereby SUMMARILY SUSPENDED upon service of this Order upon Respondent.

2. An administrative hearing on this Order for Summary Suspension and Order to Cease and Desist shall be promptly afforded Respondent, if requested in writing within 20 days. Requests for a hearing on this matter shall be made to:

Office of Financial and Insurance Services
Office of General Counsel
Attn.: Liz Thompson, Hearings Coordinator
611 West Ottawa Street, Floor Three
Lansing, Michigan 48933

3. Respondent shall immediately make available to OFIS for examination any and all books, accounts, papers, records, files, documents, safes and vaults pertaining to its activities under the MBLSLA.

4. Respondent shall immediately allow OFIS to conduct any examination or investigation of Respondent's activities under the MBLSLA as it deems necessary to protect the public interest and to assure compliance with provisions of the law.

5. Respondent shall provide to OFIS forthwith a listing of each and every person who has obtained a mortgage commitment or who has paid money to Respondent or to its officers, directors, employees, or agents to obtain a mortgage loan, and who has not closed on that mortgage loan as of the effective date of this Order. This listing shall include the name and address of each person, the amount of money paid by each person to Respondent, or its officers, directors, employees, or agents, and the name and address of the proposed lender for each loan.

6. Respondent shall contact forthwith James Westrin, Staff Attorney, OFIS Office of General Counsel, at 611 West Ottawa Street, Floor 3, Lansing, Michigan 48933, telephone (517) 335-3369, to discuss and resolve any and all issues pertaining to transactions currently pending with Respondent under the MBLSLA.

7. Respondent and its officers, directors, employees, and agents, including Johnnie Denham, Jr., shall immediately CEASE AND DESIST from engaging in any mortgage broker activities which are or should be regulated under the provisions of the MBLSLA.

8. The Commissioner of the OFIS specifically retains jurisdiction of the matters contained

herein to issue such further order or orders as she may deem just, necessary or appropriate so as to assure compliance with the law and protect the public interest.


Richard D. Lavolette
Chief Deputy Commissioner

APPLICABLE LAW AND PENALTIES

Section 15 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1665, provides as follows:

- (1) After an investigation has been conducted pursuant to section 13, the commissioner may issue an order summarily suspending a license or registration pursuant to section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws, based on an affidavit by a person familiar with the facts set forth in the affidavit or, if appropriate, based upon an affidavit, on information and belief, that an imminent threat of financial loss or imminent threat to the public welfare exists.
- (2) Pursuant to a proceeding commenced under section 92 of Act No. 306 of the Public Acts of 1969, an administrative law hearings examiner shall grant a request to dissolve a summary suspension order unless the examiner finds that an imminent threat of financial loss or imminent threat to the public welfare exists which requires emergency action and continuation of the summary suspension order.
- (3) The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

Section 12 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1662, provides as follows:

- (1) Notice to a licensee or registrant of intention to enter an order of license or registration, suspension or revocation, or notice to an applicant of a refusal to issue a license shall be given in writing, served personally or sent by certified mail to the licensee, registrant, or applicant.

(2) Within 20 days after the notice of the intention to enter an order of license or registration, suspension or revocation, or a refusal to issue a license or registration under subsection (1), the licensee, registrant, or applicant may request a hearing to contest the order or refusal. If a hearing regarding suspension or revocation is not requested, the commissioner shall enter a final order regarding the suspension or revocation. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Section 92 of the Michigan Administrative Procedures Act, MCL 24.292, provides as follows:

(1) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, an agency shall give notice, personally or by mail, to the licensee of facts or conduct which warrant the intended action. Except as otherwise provided in the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, or the regulated occupations support enforcement act, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(2) If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Section 22 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1672, provides as follows:

It is a violation of this act for a licensee or registrant to do any of the following:

- (a) Fail to conduct the business in accordance with law, this act, or a rule promulgated or order issued under this act.
- (b) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(c) Intentionally or due to gross or wanton negligence, repeatedly fail to provide borrowers material disclosures of information as required by law.

(d) Suppress or withhold from the commissioner any information that the licensee or registrant possesses and that, if submitted, would have made the licensee or registrant ineligible for licensing or registration under this act or would have warranted the commissioner's denial of a license application or refusal to accept a registration.

(e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(f) Until proper disbursement is made, fail to place in a trust or escrow account held by a federally insured depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by the licensee that the borrower is obligated to pay to a third party, including amounts paid to the holder of the mortgage loan, amounts for property taxes and insurance premiums, or amounts paid under an agreement that requires if the mortgage loan is not closed the amounts paid shall be refunded to the prospective borrower or if the mortgage loan is closed the amounts paid shall be applied to fees and costs incurred at the time the mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the mortgage loan application, to obtain an appraisal, or to receive a credit report.

(g) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under this act.

(h) To be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(i) Refuse or fail to pay, within a reasonable time, those expenses assessed to the licensee or registrant under this act.

(j) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make

restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(k) Fail to make a mortgage loan in accordance with a written commitment to make a mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment before the expiration of the commitment.

(l) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a mortgage loan application.

(m) Take a security interest in real property before closing the mortgage loan to secure payment of fees assessed in connection with a mortgage loan application.

(n) Except as provided under section 18e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

Section 11 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1661, provides as follows:

(1) The commissioner shall exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in this state.

(2) In addition to the other powers granted to the commissioner by this act, the commissioner shall have all of the following powers:

(a) To promulgate reasonable rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement and administer this act.

(b) To deny an application for a license.

(c) To conduct examinations and investigations of any person as necessary for the efficient enforcement of this act and the rules promulgated under this act.

(d) To advise the attorney general or the prosecuting attorney of the county in which the business is conducted that the commissioner believes a licensee, registrant, or person is violating

this act. The attorney general or prosecuting attorney may take appropriate legal action to enjoin the operation of the business or prosecute violations of this act.

(e) To bring an action in the Ingham county circuit court in the name and on behalf of this state against the licensee, registrant, or any other person who is participating in, or about to participate in, any unsafe or injurious practice or act in violation of this act or a rule promulgated under this act, to enjoin the person from participating in or continuing the practice or engaging in the act.

(f) To order a person to cease and desist from a violation of this act or a rule promulgated under this act in accordance with section 16.

(g) To suspend or revoke a license or registration in accordance with section 29.

(h) To require that restitution be made in accordance with section 29.

(i) To assess a civil fine in accordance with section 29.

(j) To censure a licensee or registrant.

(k) To issue an order to prohibit a person from being employed by, an agent of, or control person of a licensee or registrant as provided under section 18a.

Section 20 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1670, provides as follows:

(1) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Compel the attendance of a person by subpoena.

(b) Administer oaths.

(c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.

(d) Have free access during regular business hours to the offices, places of business, or other location where the licensee or registrant, or an affiliate of a licensee or registrant, maintains business related documents, and to the books, accounts, papers,

records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation shall be confidential and shall not be available for public inspection or copying, or divulged to any person, except as provided in this section. The information may be disclosed as follows:

- (i) To the attorney general.
- (ii) To any regulatory agency.
- (iii) In connection with an enforcement action brought pursuant to this or another applicable act.
- (iv) To law enforcement officials.
- (v) To persons authorized by the Ingham county circuit court to receive the information.
- (e) Employ independent investigators to conduct a part or all of the investigation, in the case of an investigation other than an examination.

(2) A person subpoenaed under this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena, or to produce books, accounts, records, files, or documents required by the commissioner, or who refuses to be sworn or, unless permitted by law, refuses to answer as a witness, is guilty of a misdemeanor.

(3) Unless circumstances warrant additional examinations, the commissioner is entitled to conduct 1 examination of each licensee during the calendar year. The commissioner may conduct an investigation of a licensee or registrant against whom a complaint has been filed.

Section 29 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1679, provides as follows:

- (1) A person or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of such person who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 3 years, or both:

(a) Engages in this state in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under this act.

(b) Transfers or assigns a mortgage loan or a security directly representing an interest in 1 or more mortgage loans before the disbursement of 75% or more of the proceeds of the mortgage loan to, or for the benefit of, the borrower. This subdivision does not apply to any of the following:

(i) A land contract not considered to be an equitable mortgage.

(ii) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the loan proceeds for a limited period of time.

(iii) A construction loan.

(iv) A loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the mortgage loan.

(c) Transfers or assigns a mortgage loan or a security representing an interest in 1 or more mortgage loans to an individual investor unless 1 or more of the following apply:

(i) The transfer or assignment is made through a broker-dealer which is a member of the New York stock exchange.

(ii) The transfer or assignment is made through a broker-dealer who meets all of the following criteria:

(A) The broker-dealer is registered under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

(B) The broker-dealer is not an affiliate of the mortgage lender unless the person acquired the broker-dealer registration, directly or indirectly, before September 1, 1987 under Act No. 265 of the Public Acts of 1964, was affiliated with a mortgage lender before September 1, 1987, and has continuously maintained that registration subsequent to September 1, 1987. For purposes of this subparagraph, if an aggregate of more than 10% of the outstanding voting stock or interest in a corporation, unincorporated

organization, partnership, or other legal entity that is a broker-dealer or mortgage lender is sold, transferred, assigned, or otherwise conveyed subsequent to September 1, 1987, the registration shall be considered to not have been continuously maintained.

(C) The broker-dealer acquired the mortgage loan or security on a firm commitment.

(iii) The transfer or assignment is made to a person who the transferor or assignor believes, or has reasonable grounds to believe, is 1 of the following:

(A) A business entity having either net income from operations after taxes in excess of \$100,000.00 in its last fiscal year or its latest 12-month period, or a net worth in excess of \$1,000,000.00 at the time of purchase.

(B) An individual who, after the purchase, has an investment of more than \$50,000.00 in such loans or securities, including installment payments to be made within 1 year after purchase by the individual, has either personal income before taxes in excess of \$100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of \$1,000,000.00, and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment, or has obtained the advice of an attorney, certified public accountant, or investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under Act No. 265 of the Public Acts of 1964 with respect to the merits and risks of the prospective investment.

(iv) A transferor or assignor does not maintain its principal place of business in this state and the transferee or assignee is not a resident of this state and does not maintain its principal place of business in this state.

(2) If the commissioner finds that a licensee or registrant has violated this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, or a person who controls the licensee or registrant of not more than \$1,000.00 for each violation, except that the licensee, registrant, or a person

shall not be fined more than \$10,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.

(b) Suspend or revoke a license or registration or refuse to issue a license or renew a license or registration.

(c) Require the licensee or registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule shall constitute a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection shall be subject to the procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(4) Subsection (2) does not apply to a violation of this act that results from a bona fide error that occurs notwithstanding the adoption and observance of reasonable procedures intended to prevent the occurrence of the error.

Section 16 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1666, provides as follows:

(1) After an investigation has been conducted pursuant to section 13, and prior to holding the hearing under section 18, the commissioner may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist shall be entitled to a hearing before the commissioner if a written request for a hearing

is filed with the commissioner not more than 30 days after the effective date of the order. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A violation of a cease and desist order issued under this act is a violation of this act and the commissioner or the attorney general may take any action permitted under this act, including making application to the Ingham county circuit court to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order.